



## 2015 HOME PROGRAM DESCRIPTION

The Department of Housing and Urban Development (HUD) has designated the State of North Dakota as a Participating Jurisdiction (PJ) and as such it may apply for and distribute HOME funds. The agency responsible for administration of the North Dakota HOME Program is the Department of Commerce, Division of Community Services (DCS).

This is a description of how the state plans to distribute FY 2015 HOME funds and administer its program. The plan demonstrates consistency with the goals identified in the state's Consolidated Plan (CP). Accordingly, the state can use its HOME funds for the following activities to help meet the identified housing needs:

- Rehabilitation of Owner-occupied and Rental Property
- Homebuyer Assistance
- Tenant Based Rental Assistance (including security and utility deposits)
- Acquisition, New Construction, Site Improvements, or Demolition Linked to a Project
- Administrative Costs
- Operating Expenses for Community Housing Development Organization (CHDO)

## TIMELY PRODUCTION AND OCCUPANCY OF ASSISTED HOUSING

The 2013 Rule revised a number of commitment and completion deadlines and imposed new occupancy deadlines:

- **HOME projects must be completed within four years of commitment.** Any project that is not completed timely will be terminated and PJs will be required to repay HOME funds drawn. [§92.205(e)(2)]
- **HOME-assisted rental units must be occupied by income-eligible households within 18 months of project completion;** if not, PJs must repay HOME funds for the vacant units. Note, for units that remain vacant six months following completion, the PJ must identify and develop an enhanced marketing plan and report this information to HUD. [§92.252]
- **A homebuyer unit must have a ratified sales contract within nine months of construction completion,** or the PJ must either convert it to a HOME rental unit or repay the full HOME investment. [§92.254(a)(3)]



ALTERNATIVE FORMATS FOR DISABLED  
PERSONS ARE AVAILABLE UPON REQUEST

- **Funds must be committed to specific projects within 24 months of the PJ receiving its HOME allocation.** The PJ can no longer “reserve” CHDO funds for projects that will be identified at a later date. [*§92.2 Commitment, §92.300(a)(1)*]
- **CHDO set-aside funds must be expended within 5 years** of when the PJ receives its formula allocation. [*§92.500(d)(1)(A) and (C), and §92.500(d)(2)*]

## **DISTRIBUTION PLAN**

The state will administer its program through state recipients, sub recipients, non-profits, and CHDOs. The HOME Program will be allocated to state recipients and sub recipients through a non-competitive set-aside. The non-profit and CHDO category will be competitive and awarded based on scoring criteria. Any funds remaining after the competitive round will be distributed on a first-come-first-serve need basis.

Applicants new to the HOME Program are required to partner with an experienced developer, sponsor, or consultant (i.e., someone with projects completed and operating successfully).

The state may reallocate funds from one category to another, or one state recipient or sub recipient to another, because of high demand, an emergency due to a natural disaster, or determinations that performance-based measures have not been met.

State program income received by DCS may be allocated, at our discretion, for any project or activity deemed necessary.

Relocation is the only allowed activity in a designated floodplain under the state’s multi-year environmental review. Grand Forks and Bismarck may complete their own environmental reviews and make their own floodplain determinations on a case-by-case basis.

## **HOME Goals and Eligible Activities**

The HOME Program focuses on four major housing needs:

1. Single-family Rehabilitation – Community Action Agencies, Housing Authorities
2. Rental Production and Rehabilitation – Community Housing Development Organizations, Non-profits
3. Homeowner Assistance – Community Action Agencies, Housing Authorities, ND Housing Finance Agency
4. Tenant-based Rental Assistance – Community Action Agencies, Housing Authorities

Each of these needs is considered high or medium priority need for use of HOME funds. These needs are addressed and prioritized locally by set-asides made by the Division of Community Services to their recipients and sub recipients. Each recipient and sub recipient delivers the HOME Program in their region, city or multiple regions. Each year, the State will review the needs and completed goals and make a determination if the goals should be changed based on new developments that have created different needs around the state.

## HOME Performance Measures

The state collects performance data on HOMENet, the state's in-house HOME Program data collection system. Recipients and sub recipients are required to report performance data for all activities. The performance data consists of entering one of three **objectives** for the program: Suitable Living Environment, Decent Housing, and Creating Economic Opportunities. In addition, an appropriate **outcome** is also required: Availability/Accessibility, Affordability, or Sustainability. Based on the objectives and outcomes selected, the system will populate the specific **output indicators** for each activity. DCS will then enter this information on HUD's Integrated Disbursement and Information System (IDIS).

2015 Summary of Funding ESTIMATE			
2014 HUD Award	\$ 3,002,167.00		
State Program Income	\$ 11,476.26		
Total 2014 Allocation	\$ 3,013,643.26		
Total Available for Project Set-Aside	\$ 2,563,426.56		
Total Available for Administration Set-Aside	\$ 300,216.70		
Total Available for Operating Set-Aside	\$ 150,000.00		
Recipients	Project	Administration	Operating
Bismarck	\$ 335,000.00	\$ 15,000.00	
Grand Forks	\$ 0	\$ 0	
Community Action Agency - Minot (Reg. II)	\$ 140,000.00	\$ 10,000.00	
Dakota Prairie CAA (Reg. III)	\$ 140,000.00	\$ 10,000.00	
Red River Valley Community Action (Reg. IV)	\$ 140,000.00	\$ 10,000.00	
Southeastern North Dakota CAA (Reg. V)	\$ 140,000.00	\$ 10,000.00	
Community Action Program Reg. VI	\$ 0	\$ 0	
Community Action Program Reg. VII	\$ 140,000.00	\$ 10,000.00	
Community Action & Development (Reg. I & VIII)	\$ 280,000.00	\$ 20,000.00	
Stutsman County Housing Authority	\$ 30,000.00	\$ 3,000.00	
Cass County Housing Authority	\$ 30,000.00	\$ 3,000.00	
North Dakota Housing Finance Agency	\$ 275,000.00	\$ 15,000.00	
Open CAP/Housing Authority Award(s)	\$ 140,000.00	\$ 10,000.00	
Nonprofit and CHDO(s) (minimum of 15% of 2014 award to CHDO(s))	\$761,950.30 (\$450,325.05)		\$ 150,000.00
PI Reserved for Troubled/At-Risk Projects	\$ 11,476.26		
State Administration		\$ 184,216.70	
Performance Set-Aside		0	
TOTAL	\$ 2,563,426.56	\$ 300,216.70	\$ 150,000.00

## SECTION I

### State Recipients and Sub Recipients

All recipients are expected to locally meet the HOME Program match requirement of 25 percent unless specifically waived by the DCS. Existing general waivers include a state policy that homeowner rehabilitation and TBRA activities are excluded from the match requirement.

Only the forms of HOME assistance listed in Part 92.205(b) will be allowed. Applicants should use private funds, tax credits, Rural Development, Federal Home Loan Bank, CDBG, North Dakota Housing Incentive Fund, Department of Energy, or other grant/loan programs to help leverage HOME activities.

#### **State Recipient Set-Aside**

HOME funds will be reserved for the two communities (Bismarck and Grand Forks) that are entitlement cities, but not PJs. This program component is non-competitive, and each city will be eligible to apply for a predetermined amount of funding based on population, number or percentage of low-income households, and housing needs. Although these cities will be able to design their projects to meet local needs, all activities must be within the parameters of the State HOME Program. **Each city must submit the annual HOME plan by July 15, 2015.** This plan will reserve their set-aside funds and become their performance goals for 2014. The cities must submit their final HOME Project Application(s) and certification of Consolidated Plan compliance before HOME funds will be committed. The HOME Project Application(s) must be fully completed and received by **December 1, 2015**. Please note that no construction activities may begin until this process is fully completed, and DCS has issued the notification of release of funds.

#### **Sub Recipient Set-Aside**

HOME funds will be set aside for the ND Housing Finance Agency, two Housing Authorities and the seven Community Action Agencies to complete activities in their jurisdiction that are consistent with the State's Consolidated Plan and are a priority for their area. **The completed HOME Application Plan must be submitted to DCS no later than July 15, 2015.**

#### **Sub Recipient Definition**

A public agency or non-profit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide down payment assistance, or provide tenant-based rental assistance. A public agency or non-profit organization that receives HOME funds solely as a developer or owner of a housing project is not a sub recipient. The participating jurisdiction's selection of a sub recipient is not subject to the procurement procedures and requirements.

#### **Housing Finance Agency Set-Aside**

HOME funds may be used for homeowner assistance. Assistance can be in the form of down payment and closing costs assistance. This program will be administered as a statewide program through an agreement with the North Dakota Housing Finance Agency.

Neither the initial purchase price, nor the appraised value at acquisition (including any required repairs needed to meet property standards) of the housing, shall exceed 95 percent of the median purchase price for a single-family residence (single-family residence, condominium unit, cooperative unit, or combination manufactured home and lot). The housing must be the principal residence of an owner whose family qualifies as a low-income household at the time of purchase. The recipient of down payment and closing cost assistance must complete homebuyer counseling prior to closing. Finally, all applicable regulatory provisions under 24 CFR Part 92.254 will be followed if not specifically mentioned in this description.

### **Housing Authorities**

The Stutsman County Housing Authority and Cass County Housing Authority will receive a set-aside to complete a security or utility deposit program, or an approved TBRA program. These HOME dollars will be used in emergency situations to prevent homelessness or to assist persons in transitional housing to secure permanent rental housing. Funds may also be used to assist low-income families in securing a more affordable rental unit. Funds will be used only for security or utility deposits, or an approved TBRA program.

Recipients must develop written guidelines that meet program requirements and comply with 24 CFR Part 92.209, to include the following:

- The security or utility deposit may not exceed the equivalent of one month's rent for the housing unit;
- Tenant selections must comply with 92.209 (c);
- Only the prospective tenant may apply for HOME security deposit assistance, although the funds must be paid directly to the landlord;
- Rental units must be inspected for Housing Quality Standards compliance;
- The lease must comply with the requirements of section 92.253 (a), (b), (c); and
- The assistance may be in the form of a grant or a loan. If the assistance is to be provided as a loan, the agency's loan program must be pre-approved by DCS.

### **Community Action Agency Set-Aside**

Eligible activities can include all necessary **rehabilitation** required to bring an existing owner-occupied home up to Section 8 Housing Quality Standards (HQS) and the ND HOME Program's Rehabilitation Standards, and **Tenant-based Rental Assistance** including security and utility deposits. All rehab work must meet all applicable state and local code requirements. When rehabilitation is selected as a regional priority, neither the estimated value of the house prior to rehabilitation or the after-rehab value of the housing shall exceed 95 percent of the median purchase price for a single-family residence (single-family residence, condominium unit, cooperative unit, or combination manufactured home and lot). Each homeowner will be required to sign a Housing Rehabilitation Program Homeowner Agreement that will be determined on the amount of funds provided to the homeowner. The period of affordability will be as follows:

<b>HOME Assistance Per Unit</b>	<b>Minimum Period of Affordability</b>
Less than \$15,000	5 yrs.
\$15,000 - \$40,000	10 yrs.
More than \$40,000	15 yrs.

The terms of the agreement for repayment may allow for a pro-rata reduction of the recapture amount in monthly increments. Below is an example of a five-year plan:

Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture
1	100%	11	83.3%	21	66.6%	31	50.0%	41	33.3%	51	16.6%
2	98.3%	12	81.6%	22	65.0%	32	48.3%	42	31.6%	52	15.0%
3	96.6%	13	80.0%	23	63.3%	33	46.6%	43	30.0%	53	13.3%
4	95.0%	14	78.3%	24	61.6%	34	45.0%	44	28.3%	54	11.6%
5	93.3%	15	76.6%	25	60.0%	35	43.3%	45	26.6%	55	10.0%
6	91.6%	16	75.0%	26	58.3%	36	41.6%	46	25.0%	56	8.3%
7	90.0%	17	73.3%	27	56.6%	37	40.0%	47	23.3%	57	6.6%
8	88.3%	18	71.6%	28	55.0%	38	38.3%	48	21.6%	58	5.0%
9	86.6%	19	70.0%	29	53.3%	39	36.6%	49	20.0%	59	3.3%
10	85.0%	20	68.3%	30	51.6%	40	35.0%	50	18.3%	60	1.6%

When housing rehabilitation is selected, each CAA must develop Homeowner Rehabilitation Guidelines (HRG). This HRG must contain the following and be submitted with their application.

- a. The criteria used to determine applicant eligibility in terms of income, assets, ownership, occupancy, and location. Include any priorities which are used to select households for assistance (e.g., households with income less than 50 percent of median) and how income information will be verified.
- b. The types of property or properties eligible for assistance (i.e., single-family unit, condominium unit, mobile home/manufactured home [permanent foundation on private lot], and cooperative unit).
- c. Describe any type of homeowner contribution required (cash, labor, or materials).
- d. Describe how you will inspect for Housing Quality Standards (HQS) Requirements (24 CFR 882.109), ND HOME Program Rehabilitation Standards, and assure that all work completed meets the North Dakota State Building Code (or a locally amended North Dakota State Building Code). Describe how your agency will assure that newly constructed housing meets the current edition of the Model Energy Code, Uniform Building Code, and Uniform Mechanical Code.
- e. Define how you will meet lead-based paint regulations.
- f. Describe the minimum and maximum amount of assistance allowed and the terms of the assistance. Indicate what will happen if a house cannot be brought up to HQS and ND HOME Program Rehabilitation Standards with the maximum investment.

- g. Describe how you will assure that no more than the necessary amounts of HOME Program funds are invested in any one project. (Layering)
- h. Define the role and responsibilities for staff, owner, and contractor. Describe the grievance procedure for applicants and for disputes between an owner and a contractor.
- i. Describe your conflict of interest policy.
- j. Describe the homeowner counseling services that are available to each client.

When **Tenant-based Rental Assistance** is determined as a priority in the region, the HOME funds must be earmarked for security or utility deposits or for an approved TBRA program. These HOME dollars can be used in emergency situations to prevent homelessness, to provide assistance to persons in transitional housing to secure permanent rental housing, and to assist low-income families in securing a more affordable rental unit. The TBRA program funds must be used in accordance with 92.209 and be tied to an existing self-sufficiency program.

Recipients of security and utility deposit funds must develop written guidelines that meet program requirements and to include the following:

- The security or utility deposit may not exceed the equivalent of one month's rent for the housing unit;
- Tenant selections must comply with 92.209 (c);
- Only the prospective tenant may apply for HOME security deposit assistance, although the funds must be paid directly to the landlord;
- Rental units must be inspected for Housing Quality Standards compliance;
- The lease must comply with the requirements of section 92.253 (a), (b), (c); and
- The assistance may be in the form of a grant or as a loan. If the assistance is to be provided as a loan, the agency's loan program must be pre-approved by the state.

This program will be administered on a regional basis through agreements with Community Actions Agencies (CAA) and Housing Authorities (HA). To encourage good planning and cooperative efforts, each Community Action Agency and Housing Authority is encouraged to contact their respective Regional Council to notify them of the assistance they may provide through the programs they administer.

### **Recapture Requirements for Homebuyer Assistance**

DCS expects that all homebuyer assistance will include direct assistance to the homebuyer. Therefore, a recapture provision will be used. In the event circumstances arise where there is no direct subsidy to the homebuyer and HOME funds are used for development subsidy only, DCS will use an appropriate resale provision.

In order to ensure the period of affordability, any of the entities who have elected to provide homebuyer assistance are required to specify their recapture provisions. The recapture provisions will be contained within their written agreement with the DCS.

## **Required Recapture Provisions**

Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers if the housing does not continue to be the principal residence of the family for the duration of the period of affordability (see Period of Affordability Table). The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price (direct subsidy), but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The direct subsidy may include down payment assistance, closing costs, or any other HOME assistance provided directly or indirectly to the homebuyer. The recaptured funds must be used to carry out HOME-eligible activities. The period of affordability is based upon the total amount of HOME funds that is initially subject to recapture.

The recapture provisions must be assured so that the unit remains affordable through deed restrictions, covenants attached to the land, mortgages, or other similar mechanisms. The state recipient or subrecipient will specify which enforcement mechanism it will use. In addition, DCS, state recipient, or subrecipient will execute an agreement with each homebuyer to specify the affordability requirements and enable DCS to retain the authority to enforce them.

## **Principal Residency**

The initial buyer must reside in the home as his/her principal residence for the duration of the period of affordability.

## **Triggering Recapture**

If, during the period of affordability, an owner voluntarily or involuntarily transfers his/her property (e.g., through a sale or foreclosure), these RECAPTURE provisions go into effect.

## **Direct HOME Subsidy/Amount Subject to Recapture**

The amount subject to recapture is the direct HOME subsidy. The direct HOME subsidy is the total amount of HOME assistance that enables the buyer to purchase the unit, including: down payment and closing cost assistance and the amount that reduces the purchase price from fair market value to an affordable price. The state recipient or subrecipient can adopt any of the methods for recapture that are outlined in the HOME regulations:

- Recapture entire direct HOME subsidy
- Reduction during affordability period
- Owner investment returned first
- Shared net proceeds

The state recipient or subrecipient may also adopt Recapture provisions that differ from the model provisions in the HOME regulations. The particular Recapture provision adopted (whether one of the models or an alternate approach) requires specific approval by DCS and HUD.



DCS can never recapture more than the amount of available net proceeds upon sale. Net proceeds is the sale price of the home minus superior loan repayment (not including HOME loans) and any closing costs.

### **Period of Affordability**

The recapture provisions are in effect for a period of affordability. This period is based on the amount of direct HOME subsidy to the buyer, as follows:

<b>HOME Assistance to the Buyer</b>	<b>Minimum Period of Affordability</b>
Less than \$15,000	5 yrs.
\$15,000 - \$40,000	10 yrs.
More than \$40,000	15 yrs.
New Construction Rental	20 yrs.

### **Compliance**

During its grant monitoring of the HOME Program sub recipients, the state will review the deed restrictions, covenants attached to the land, mortgages, or other similar mechanisms placed on the HOME-assisted property, to ensure the provisions being used are in accordance with those stated in the written agreement with the sub recipient.

During the affordability period, the state recipients/sub-recipients must do an annual compliance check to ensure that the initial homebuyer still resides in the property as his/her principal residence. The most current utility statement or proof of paid taxes and homeowner's insurance is acceptable documentation.

### **Noncompliance**

During the affordability period, noncompliance occurs when an owner (1) vacates the unit or rents the unit to another household, (2) sells the home without DCS receiving recaptured funds due at time of sale. In the event of noncompliance, the owner is subject to repay all HOME funds invested in the housing. This is based on the total amount of HOME funds invested, including both development funds and direct subsidy to the buyer minus any principal HOME loan repayments. Note, the repayment amount is not subject to any reductions that might be otherwise applicable under a recapture provision (such as forgiveness for the term of occupancy or repayment to owner first).

The following entities intend to provide assistance to homebuyers and have elected to use the Recapture Provision as explained below:

- The City of Grand Forks: **Recapture Provision**

- The entity will follow the recapture option in 24 CFR 92.254 (a) (5) (ii) (A) (2) which allows for recapturing a reduced amount during the affordability period. The city will require a minimum ten-year affordability period with 0 percent reduction of the recapturable amount during the first five years. Beginning in year six, the recapturable amount of the HOME investment will be reduced on a pro-rata basis, as long as the homeowner continues to own and occupy the home. (For instance, in a ten-year affordability period, if the home is sold in year 3, the full amount of the subsidy to the buyer will be recaptured. If sold in year 7, 2/10th (40%) will be forgiven, and 60% will be recaptured.
- If the net proceeds (sale price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the HOME investment and enable the homeowner to recover his homeowner investment (the amount of their down payment), the HOME recapture amount will be set as follows:

$$\frac{\text{HOME Investment}}{\text{HOME Investment} + \text{Homeowner Investment}} \times \text{Net Proceeds} = \text{HOME Recapture Amount}$$

- The North Dakota Housing Finance Agency: **Recapture Provision**

- The entity will follow the recapture option in 24 CFR 92.254 (a) (5) (ii) (A) (2) which allows for recapturing a reduced amount during the affordability period. For their down payment and closing costs assistance program, the North Dakota Housing Finance Agency will require the minimum affordability period based on the amount of the direct home subsidy. Beginning in year one, the recapturable amount of the HOME investment will be reduced on a pro-rata basis, as long as the homeowner continues to own and occupy the unit. (For instance, if the affordability period is ten years and the owner occupies the unit for six years, then 6/10ths (60%) of the recapture amount will be forgiven, and 40% of the direct home subsidy amount will be recaptured.)
- If the net proceeds (sale price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the HOME investment and enable the homeowner to recover his homeowner investment (the amount of their down payment), the HOME recapture amount will be set as follows:

$$\frac{\text{HOME Investment}}{\text{HOME Investment} + \text{Homeowner Investment}} \times \text{Net Proceeds} = \text{HOME Recapture Amount}$$

- Eastern Dakota Housing Alliance: **Recapture Provision**

- The entity will follow the recapture option in 24 CFR 92.254 (a) (5) (ii) (A) (2) which allows for recapturing a reduced amount during the affordability period. Eastern Dakota Housing Alliance will require the minimum affordability period based on the amount of the direct home subsidy. Beginning in year one, the recapturable amount of the HOME investment will be reduced on a pro-rata basis, as long as the homeowner continues to own and occupy the unit. (For instance, if the affordability period is ten years and the owner occupies the unit for six years, then 6/10ths (60%) of the recapture amount will be forgiven, and 40% of the direct home subsidy amount will be recaptured.)
- If the net proceeds (sale price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the HOME investment and enable the homeowner to recover his homeowner investment (the amount of their down payment), the HOME recapture amount will be set as follows:

$$\frac{\text{HOME Investment}}{\text{HOME Investment} + \text{Homeowner Investment}} \times \text{Net Proceeds} = \text{HOME Recapture Amount}$$

## **Administration**

The state (as the PJ), state recipients, and sub recipients will be allowed to receive HOME monies for administrative expenses. These costs may not exceed 10 percent of the entire HOME allocation for North Dakota.

## **Performance-based Set-Asides**

The amounts listed in the Summary of Funding will not be awarded the next fiscal year unless an acceptable level of disbursement of funds previously awarded has been attained (***disbursement means funds are drawn from the U.S. Treasury***). The state will review past performance to determine the level of funding. If an agency cannot meet their performance measures by February 1, 2015, they must submit a letter of justification by January 15, 2015. This letter must explain why they cannot meet their performance measure and justify their requested set-aside. Each case will be reviewed separately and the Director of DCS will make the final determination.

DCS will notify agencies of the availability of any unobligated funds, and will make funds available according to its original identity or deemed appropriate by the Director of DCS. Recipients that can demonstrate all years including 2014 funding allocation are 100 percent committed can request additional dollars for shovel ready projects.

## **State and Sub recipient Set-Asides**

Unobligated performance funds may be reallocated to other State and Sub Recipient(s) that can demonstrate all years including 2014 allocation are 100 percent committed, have an unmet need, ready to proceed and have capacity to spend the funds in a timely manner may request the unobligated performance funds.

## **SECTION II**

### **CHDO/Non-profit**

All recipients are expected to locally meet the HOME Program match requirement of 25 percent unless specifically waived by the DCS. Existing general waivers include a state policy that homeowner rehabilitation and TBRA activities are excluded from the match requirement.

Only the forms of HOME assistance listed in Part 92.205(b) will be allowed. Applicants should use private funds, tax credits, Rural Development, Federal Home Loan Bank, CDBG, North Dakota Housing Incentive Fund, Department of Energy, or other grant/loan programs to help leverage HOME activities.

**Submission of the CHDO and Non-profit Application(s) are due by September 30, 2015.**

The application process for CHDOs/Non-profits will be competitive for the first round if any funds remain, and it will be on a first come, first-serve based on needs. Extra points will not be given to CHDOs; however they will be given preferential status when awarding funds to the extent necessary to meet the HUD CHDO 15% requirement.

Please note that no construction activities may begin until a completed financial award has been signed, and the DCS has issued the Notification of Release of Funds.

#### **Owner**

Rental housing is “owned” if the housing organization is the owner in fee simple absolute of multifamily or single family housing (or has a long term ground lease) for rental to low-income families in accordance with §92.252. If the housing is to be rehabilitated or constructed, the housing organization must prove internal capacity or hire and oversee the developer that rehabilitates or constructs the housing. At minimum, the housing organization must hire or contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The housing organization must own the rental housing during development and for a period at least equal to the period of affordability in §92.252. If the housing organization acquires housing that meets the property standards in §92.251, the organization must own the rental housing for a period at least equal to the period of affordability in §92.252.

#### **Developer**

Rental housing is “developed” by a housing organization if the housing development organization is the owner of multifamily or single family housing in fee simple absolute (or has a long term ground lease) and the housing developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with §92.252. To be the “housing developer,” the housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the housing development organization must own the housing during development and for a period at least equal to the period of affordability in §92.252.

## **Sponsor (CHDO only)**

Rental housing is “sponsored” by a CHDO if the CHDO “developed” the rental housing project that it agrees to convey to an identified private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing is subject to the following requirements:

The private non-profit organization may not be created by a governmental entity.

The HOME funds must be provided to the entity that owns the project.

The HOME funds must be invested in the project that is owned by the CHDO.

Before commitment of HOME funds, the CHDO sponsor must select the non-profit organization that will obtain ownership of the property.

The non-profit organization assumes the CHDO’s HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.

If the housing is not transferred to the non-profit organization, the CHDO organization sponsor remains responsible for the HOME assistance and the HOME project.

## **Community Housing Development Organization (CHDO)**

Eligible applicants include community-based non-profit 501(c)(3), 501(c)(4), or 905 (subordinate organization of a 501 (c) organization) organizations with the mission statement that identifies decent, affordable housing to low and moderate-income persons.

The DCS designates non-profit organizations that meet defined criteria as CHDOs. A CHDO is defined in the HOME Investment Partnerships Program Final Rule Subpart A, §92.2.

**Note:** Non-profits are not required to be a designated CHDO to apply for DCS HOME Program funding.

HUD requires that DCS set aside at least 15% of HOME annual allocation for Community Housing Development Organizations (CHDOs). In addition, these organizations must meet and satisfactorily demonstrate the prescribed requirements. DCS will be using the DRAFT HUD guidance on CHDO qualifications. CHDO’s are also eligible to participate in non-CHDO housing activities.

CHDOs may be eligible for the operating set-aside based on need. No CHDO may receive more than \$50,000 per year. DCS cannot exceed \$150,000 per program year in total.

Up to 10 percent of the CHDO set-aside may be used for pre-development loans to assist specific projects. Per 92.301 these loans can be used for technical assistance and site control, and seed money loans. The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are

impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower. Predevelopment loan repayments must be sent to the DCS. The repaid funds will be added to the next FY allocation.

**CHDO Definition** - A non-profit organization that:

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:
  - (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
  - (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;
  - (iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing; and
  - (iv) The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization.
- (4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1)), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private non-profit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of “community housing development organization;”
- (5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public

officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization;

- (6) Has standards of financial accountability that conform to 24 CFR 84.21, “Standards for Financial Management Systems;”
- (7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
- (8) Maintains accountability to low-income community residents by:
  - (i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, “community” may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and
  - (ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
- (9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of §92.300(a)(2). A non-profit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and
- (10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

The private non-profit organization may not be created by a governmental entity.

The HOME funds must be invested in the project that is owned by the community housing development organization.

## **Non-profits**

Non-profits can participate in the HOME Program as owners or developers of multi-family housing. The non-profit must not be disqualified from any program administered by DCS or under debarment, proposed debarment or suspension by a federal agency.

The non-profit must be able to demonstrate technical expertise of staff and other project partners in housing production and management and meet the following criteria:

- The non-profit has successfully administered (this means following all the cross-cutting requirements, such as: Davis Bacon, Section 3, and Contract Compliance) at least one (1) HOME, CDBG, or NSP funded development of similar nature and scope;

**or**

- Has a proven track record in affordable housing development and project management for a minimum period of five (5) years prior to the application submission date; and
- Documented capacity to carry out the long-term rental compliance responsibilities associated with the development through the period of affordability.

## **Troubled or At-Risk Projects**

DCS has a set-aside to address HOME projects that are troubled or at-risk determined by asset management. DCS may address refinancing candidates, capital need shortfalls, operational needs, property management concerns (unit maintenance, occupancy, rent levels, crime, etc.), expiring subsidies/use agreements.

## **MINORITY AND WOMAN BUSINESS OUTREACH PROGRAM**

Executive Orders 11625, 12432, and 12138 require the encouragement and use of minority and women-owned businesses in conjunction with the HOME Program. To encourage the use of minority and women-owned businesses in bids for the various programs under the North Dakota HOME Program, the DCS (DCS) will include the latest list of certified minority and women-owned businesses with each application package.

Minority and women-owned business enterprises are encouraged to participate as suppliers, contractors, lenders, etc. to provide services to projects assisted with HOME funds in all notices and advertisements related to the HOME Program.

To maintain statistical data on the use and participation of minority and women-owned business enterprises as contractors or subcontractors in HOME-assisted program contracting activities, owners will be required to identify jobs that have been bid by minority or women-owned businesses. In addition, the applicant may inspect the site to confirm the percentage of minority and women laborers working at the site.

Contact DCS for guidance.



## **AFFIRMATIVE MARKETING PROCEDURES**

The DCS will take the following actions to provide information to attract eligible persons from all racial, ethnic, and gender groups in the housing market area that is assisted by HOME funding.

All correspondence, notices and advertisements related to the HOME Program, must contain the Equal Housing Opportunity logo or slogan.

Participants in the HOME Program will be required to use affirmative fair housing marketing practices in soliciting renters or buyers, determining their eligibility, and concluding all transactions. Any HOME-assisted housing must comply with the following procedures for the required compliance period, depending on the program used:

1. Owners advertising vacant units must include the equal housing opportunity logo and/or slogan. Wherever a phone number is provided, there must also be a TDD/TTY phone number, or equivalent, provided. The Relay North Dakota TDD number is 800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. This service is free of charge. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works for both TTY and voice telephones and while it is applicable in most states, you are still required to list the “800” numbers presented above. Advertising media may include newspapers, radio, televisions, brochures, leaflets, or a sign in a window. In addition, owners will be required to have written communication to Fair Housing organizations.
2. The owner will be required to solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts. In general, persons who are not of the race or ethnicity of the residents of the neighborhood in which the rehabilitated building is located shall be considered those least likely to apply. Special outreach efforts will include contacts with community action agencies, human service centers and county social service offices.
3. The owner must maintain a file containing all marketing efforts (e.g., copies of newspaper ads, memos of phone calls, copies of letters, etc.) and the records to assess the results of these actions are to be available for inspection by the DCS.
4. The owner shall maintain a listing of all tenants residing in each unit from the time of application through the end of the compliance period.

The DCS will assess the affirmative marketing efforts of the owner by comparing predetermined occupancy goals (based upon the area from which potential tenants will come) to actual occupancy data that the owner is required to maintain. The owner's outreach efforts will also be evaluated by reviewing marketing efforts. The DCS will assess these efforts by use of a compliance certification or a personal monitoring visit to the project at least annually.

Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions that the DCS may deem necessary. In addition, owners will be counseled as to affirmative marketing requests. In the event they continue to be in non-compliance, they may not be allowed to receive future HOME funds.

All units of local government that receive HOME funds must submit affirmative marketing procedures they have adopted to the DCS.

## **Scoring Criteria**

Each application meeting the threshold requirements will be reviewed and assigned points according to the following selection criteria. Applications must achieve a minimum score of 80 points to be considered for funding. Scoring will be on entire project/units (not just HOME units). Only one (1) application per project will be considered. Applicants may request no more than 60% of the hard construction costs. Income targeting for HOME requires at initial occupancy that not less than 90% of the units assisted with HOME funds be occupied by families at 60% and below area median income. Projects with five (5) or more HOME units, 20% of those units must have low home rents for the period of affordability.

### **A. Income Targeting**

Scoring for additional targeted units must have another program LURA or DCS will restrict these units at the state level.

#### **1) Serves Extremely Low Income Households 5-15 points**

Up to 15 points will be awarded to properties with units both income and rent restricted for households at or below 30% of area median income. Elections made in this category must be incorporated into a Land Use Restrictive Agreement and will be binding, at a minimum, for the term of the HOME loan.

20% of total units income and rent restricted at or below 30% of AMI - 15 points

15% of total units income and rent restricted at or below 30% of AMI - 10 points

10% of total units income and rent restricted at or below 30% of AMI - 5 points

For purposes of applying the 30% rent restriction under this category, and exception for exceeding the 30% rent may be granted for Section 8 project-based rental assistance where it can be shown that additional rents are necessary to make the project feasible and that the rent will not exceed 30% of the tenant's income. This exception will not apply for Section 8 tenant based rental assistance.

***and/or***

#### **2) Serves Very Low and Low Income Households 15 points**

15 points will be awarded to properties with additional assisted units which are income restricted at or below the 80% area median income and rent restricted at or below 50% area median income level. Elections made in this category will be incorporated into the Land Use Restrictive Agreement and will be binding.

B. Addresses Housing Shortage in Developing Communities of 20,000 or less 15 points

15 points will be awarded to projects located in communities under 20,000 in population and that can demonstrate an unmet housing need or shortage. An unmet housing need or shortage can be substantiated per underwriting requirements. The population data will come from census.gov (2010).

C. Leveraging Up to 25 points

DCS will award up to 25 points if HOME funds are leveraged against other financial resources used to cover costs allocated to the HOME assisted units as follows (note that points will not be awarded for funds utilized to finance market rate units):

<u>Points</u>	<u>HOME Funds per HOME assisted unit</u>
25	Less than \$70,000
15	\$70,000-\$99,999
5	\$100,000-\$120,000

D. Financial Support from Local Sources 0-25 points

Of the 25% required match, 1 point will be awarded for every percentage point of the match that comes from a local contribution, defined as:

Local governmental and community private contributions, including but not limited to cash, measurable in-kind services, or tax abatements, to reduce project costs or enhance feasibility. Contribution to the North Dakota Housing Incentive fund will not be counted in this category.

E. Readiness to Proceed Range of 0-25 points

Applicant must have provided a timeline for completion of the project. Points awarded in this category are based on earliest achievable completion of the activity. Such things as letters of commitment for both construction and permanent financing; ownership or option to purchase land; and availability of infrastructure will be considered in the award of points.

F. Rehab of Existing Vacant Habitable Structures 15 points

Proposals involving the rehabilitation of existing structures that are at risk of becoming uninhabitable or obsolete because of age and deterioration, and requiring a minimum of \$80,000 per unit in hard construction costs may receive 15 points. Applicants may wish to consult with DCS before applying for points in this category.

G. Preservation

5 points

Federally assisted properties in danger of prepayment, such as Rural Development 515 financed or those with project-based rental assistance, which are “at-risk” of being lost from the state’s affordable housing inventory, will receive 5 points.

H. Special Needs

5-15 points

Projects with units targeted to special needs households, including those with physical disabilities, chronic or persistent mental illness, drug/chemical dependency, or frail elderly and can demonstrate appropriate construction design and the availability of appropriate supportive services will receive up to 15 points depending on the number of set-aside units. Projects with a minimum of 10% of the units set-aside for special needs households will receive 5 points, from 11% to 15% of the units will receive 10 points and more than 15% will receive 15 points.

I. Neighborhood Characteristics

Up to 10 points

Two (2) points will be given for services located within two (2) miles of the site. Distance will be measured by odometer from the automobile entrance of the proposed project site to the closest automobile entrance to the parking lot of the applicable service. Duplicate services will not be eligible for additional points. Points will only be given for the services listed below.

Grocery Store

Pharmacy or Drug Store

Convenience Store

Bank or Credit Union

Public Transportation

Hospital or Doctor Office

J. Public Housing Notification

5 points

A proposal which provides a written commitment to notify local public housing agencies of vacancies and give priority to households on waiting lists of those agencies will receive 10 points.

K. Cross-Cutting Requirements

Up to 25 points will be deducted

Besides the rules and requirements specific to the HOME Investment Partnerships Program (HOME), there are several additional broad federal rules that must be adhered to in the course of administering the program. While the Participating Jurisdiction (PJ) is responsible for implementing these rules, owners, developers, Community Housing Development Organizations (CHDOs), and other non-profits must also be aware of them and actively ensure that a project or activity is in compliance. These other federal requirements cover the following areas: non-discrimination and equal access; employment and contracting; environmental review; site and neighborhood standards; relocation; and lead-based paint. Applicant has had substantial findings or unresolved issues related to other federal funds from DCS including the cross-cutting requirements within the last four (4) years. This is at the discretion of DCS.